Filed 12/7/09 In re R.L. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re R.L. et al., Persons Coming Under the Juvenile Court Law.	B215780 (Los Angeles County Super. Ct. No. CK75019)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.L., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Jacqueline H. Lewis, Juvenile Court Referee. Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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In this dependency proceeding, R.L. appeals from a family law "exit order" (Welf. & Inst. Code, § 362.4[1]) concerning his sons R. and S. DCFS has not taken a position. We affirm, as we explain:

DCFS became involved with this family in September 2008. At that point, appellant lived with his girlfriend C.G. and her one year old son K. Appellant's sons R. (then six years old) and S. (then two years old) visited him on weekends and spent the remainder of his time with their mother, J. DCFS became involved after K. was hospitalized with serious injuries. Doctors, and later DCFS and police, suspected child abuse. R. and S. were present in appellant's home when K. was injured.

After they were detained, R. and S. were placed with their mother, where they remained throughout the dependency.

As to appellant, a section 300 petition was filed on October 16, 2008, with allegations that K.'s injuries would not have occurred except as the result of deliberate, unreasonable, and neglectful acts by appellant, and allegations that appellant had on prior occasions abused R. by striking his face and mouth.

Our record indicates that a separate section 300 petition was filed as to K., with allegations about C.G. DCFS reports on K.'s dependency were made available to the social worker in this dependency, and the same court decided both cases.

The section 300 hearing in this case took place in April 2009. The court considered the DCFS reports in this case and took judicial notice of the sustained petition and minute orders in K.'s dependency. In making its findings, the court noted that in K.'s case "I found both the mother and [appellant] responsible for those injuries . . . the father in this case was responsible for [K.'s] injuries. The discussion of the way that he treated this one-year-old child, standing him in the corner for hours on end; the things that he would call him, fag[g]ot, pussy. There is no doubt in my mind that both the mother of

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[1] All further statutory references are to that code.

[K.] and [appellant] are equally responsible for the numerous injuries suffered by this baby."

The court sustained the section 300 petition under subdivisions (a) and (j) and terminated jurisdiction with a family law order awarding J. sole physical and legal custody of R. and S., with visits for appellant as detailed in the order.

The applicable legal principles are clear. When making a custody determination under section 362.4, "the court's focus and primary consideration must always be the best interests of the child." (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) Our review is for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Appellant also cites *In re Chantal S.* (1996) 13 Cal.4th 196, for its holdings that when making decisions about a child, the juvenile court must look to the totality of the circumstances, without the preferences or presumptions which apply to family law cases. (*Id*. at pp. 201, 206.) He argues that the juvenile court here relied solely on the sustained allegations, and thus indulged in a presumption, and that the court failed to consider the totality of circumstances. In appellant's view, an award of joint legal custody would have been in the children's best interest. He cites the evidence that prior to K.'s hospitalization, appellant and J. got along well and were able to reach an agreement on visitation, and that at the time, J. had no concerns about the children's visit with appellant. Appellant also points out that the record does not indicate that he and J. had ever had any problems with respect to his involvement in making decisions about the children's health or education.

We see no abuse of discretion. The court did not make its decision based on a presumption in the sense that the term is used in *Chantal*, which was referring to the presumption of parental fitness or the presumption that joint legal and physical custody is in a child's best interest, which are operative in family law cases. (*Ibid*.) Nor do we see that the juvenile court failed to consider the totality of the evidence. It was well within the court's discretion to find that the evidence that J. had trusted appellant, and that there

had been no earlier problems, paled beside the evidence concerning the harm inflicted by appellant on K.

Disposition

The order is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.